

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 300

July 11, 1995, 6:50 p.m.  
Page S-9700 Temp. Record

## REGULATORY REFORM/\$100 Million Major Rule Threshold

**SUBJECT:** Comprehensive Regulatory Reform Act of 1995 . . . S. 343. Johnston amendment No. 1497 to the Dole/Johnston substitute amendment No. 1487.

### ACTION: AMENDMENT AGREED TO, 53-45

**SYNOPSIS:** As reported, S. 343 will make changes to reform the regulatory process. The Dole/Johnston substitute amendment would modify the bill in accordance with suggestions made by Senate Democrats, the Administration, and the American Bar Association. The amendment would: recodify and modify the Administrative Procedures Act (APA); impose judicially reviewable obligations on Federal agencies to craft rules in which the benefits justify the costs and to use peer reviewed, standardized risk assessments; expand the Regulatory Flexibility Act; reform the Delaney Clause; and strengthen congressional oversight.

**The Johnston amendment** would raise the cost threshold for a rule to be considered a major rule to \$100 million (instead of the proposed \$50 million), and would permit the Director of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB), at his discretion, to adjust that threshold periodically for inflation.

**Those favoring** the amendment contended:

A \$50 million threshold is too low. Since the Ford Administration, when the debate on adopting a process for evaluating major rules began, the threshold that has been proposed has been \$100 million. Presidents Ford, Carter, and Reagan all used that number as the cutoff point. With inflation, the Ford proposal would have been actually a \$252 million threshold today. Thus, over time, the proposed threshold of \$100 million has declined in real terms. This amendment would drive it even lower, by cutting the historical threshold in half. This reduction would be a mistake.

The reason for establishing a cutoff point is obvious--taken to the extreme, it does not make sense to spend several hundred thousands of dollars on a cost-benefit analysis of a rule that nationwide will have only a few-thousand-dollar impact. Perhaps the average burden such a rule may put on a business is 5 cents per year; with a cost-benefit analysis, it may be possible to lower that

(See other side)

YEAS (53)			NAYS (45)		NOT VOTING (2)	
Republicans (7 or 13%)	Democrats (46 or 100%)		Republicans (45 or 87%)	Democrats (0 or 0%)	Republicans (2)	Democrats (0)
Chafee	Akaka	Inouye	Abraham	Helms	Bond- <sup>2</sup> McCain- <sup>2</sup>	
Cohen	Baucus	Johnston	Ashcroft	Hutchison		
Hatfield	Biden	Kennedy	Bennett	Inhofe	<b>EXPLANATION OF ABSENCE</b> 1—Official Buisiness 2—Necessarily Absent 3—Illness 4—Other	
Jeffords	Bingaman	Kerrey	Brown	Kassebaum		
Roth	Boxer	Kerry	Burns	Kempthorne		
Snowe	Bradley	Kohl	Campbell	Kyl		
Specter	Breaux	Lautenberg	Coats	Lott		
	Bryan	Leahy	Cochran	Lugar		
	Bumpers	Levin	Coverdell	Mack		
	Byrd	Lieberman	Craig	McConnell		
	Conrad	Mikulski	D'Amato	Murkowski		
	Daschle	Moseley-Braun	DeWine	Nickles		
	Dodd	Moynihan	Dole	Packwood		
	Dorgan	Murray	Domenici	Pressler		
	Exon	Nunn	Faircloth	Santorum		
	Feingold	Pell	Frist	Shelby		
	Feinstein	Pryor	Gorton	Simpson		
	Ford	Reid	Gramm	Smith		
	Glenn	Robb	Grams	Stevens		
	Graham	Rockefeller	Grassley	Thomas		
	Harkin	Sarbanes	Gregg	Thompson		
	Heflin	Simon	Hatch	Thurmond		
	Hollings	Wellstone		Warner		
					<b>SYMBOLS:</b> AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	

cost to 4 cents, but that benefit hardly justifies the cost of a \$700,000 cost-benefit test. Senators must keep in mind that agency costs are not borne by agencies--they are borne by the taxpayers. We should not put a large burden on the taxpayers in order to make a small burden on businesses a little bit smaller.

Each year non-independent agencies promulgate approximately 130 major rules that impose costs in excess of \$100 million. They also promulgate hundreds of smaller rules. Rules that cost in excess of \$100 million account for 85 percent of the costs of regulations. Rules between \$50 million and \$100 million are thus obviously a minor part of the regulatory burden.

For Senators who are concerned that small businesses may find the costs of rules in the \$50 million to \$100 million range too burdensome, we have two responses. First, most such rules affect both large and small businesses. The costs do not principally fall on small businesses, and thus do not usually cause a hardship. Second, for those rules that do cause a substantial hardship, the Nunn/Coverdell amendment which we agreed to yesterday has already taken care of the problem. Because of that amendment, any rule that is subject to the Regulatory Flexibility Act because of its effect on small entities will be considered to be a major rule for the purposes of cost-benefit analysis and periodic review.

A \$100 million threshold would require a minimum number of expensive cost-benefit analyses and risk assessments to be conducted, while it would cover over 85 percent of regulatory costs. Further, it would not prevent cost-benefit review of those few less costly regulations which are burdensome to small businesses. A \$100 million threshold, in our opinion, is more reasonable than a \$50 million threshold, so we urge Senators to vote in favor of the Johnston amendment.

**Those opposing the amendment contended:**

The Johnston amendment is a step in the wrong direction. Past proposals were based on the political realities of the times. In prior years there was much less concern with the costs of regulations. Proposals to rein in those costs started from higher benchmarks, because the only regulations for which there was any sympathy for restraining were the most grossly burdensome ones. Over the past couple of decades, though, regulators have yearly churned out more and more rules. Each year's rules have not supplanted the prior year's rules; they have added to them. The cumulative effect has led to a shift in popular and political opinion. That shift was partially responsible for the huge success of Republicans in the last election. Republicans have promised to stop the growth of the Federal Government and to reduce the costs of regulations. Small businesses, local governments, and charities do not want to be hit with wave after wave of new regulations that will "only" cost them between \$50 million and \$100 million. Those burdens add up. We think it is eminently reasonable to make agencies think twice about the costs of their new rules before they impose them, even if they will "only" cost \$50 million. Our colleagues are correct that for small entities, a large part of the problem has been removed by the Nunn/Coverdell amendment, but we are still opposed to the general principle that is backed by this amendment that a rule costing between \$50 and \$100 million is too minor to try to figure out a way to reduce its costs. We must therefore vote against this amendment.